

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No 205 of 1996

with

COMPANY APPLICATION No 266 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

BOARD FOR INDUSTRIAL & FINANCIAL RECONSTRUCTION

Versus

CHAIRMAN & M.D. G.S.T.C. LTD

Appearance:

1. COMPANY PETITION No. 205 of 1996
BOARD OPINION for Petitioner
MS PJ DAVAWALA for Respondent No. 1
MR MUKUL SINHA for Respondent No. 2
SERVED BY RPAD for Respondent No. 3,19,20
MR SS PANESAR for Respondent No. 4
MR RM DESAI for Respondent No. 7
NOTICE NOT RECD BACK for Respondent No. 9
SERVED for Respondent No. 11
MR DS VASAVADA for Respondent No. 14
MR SR SHAH for Respondent No. 15

2. COMPANY APPLICATION No 266 of 1996

MR MUKUL SINHA for Petitioner
MR MUKUL SINHA for Respondent No. 2
SERVED BY RPAD for Respondent No. 3,19,20
MR SS PANESAR for Respondent No. 4
MR RM DESAI for Respondent No. 7
NOTICE NOT RECD BACK for Respondent No. 9
SERVED for Respondent No. 11
MR DS VASAVADA for Respondent No. 14
MR SR SHAH for Respondent No. 15

CORAM : MR.JUSTICE S.D.PANDIT
Date of decision: 06/02/97

ORAL JUDGEMENT

Heard Mr. Kirit Raval learned counsel for the Gujarat State Textile Corporation, Mr. Roshan Desai learned counsel for State Bank of India, Bank of Baroda and GIIC, Mr. Mukul Sinha learned counsel for Gujarat Mill Mazdoor Union, GSTC Employees Union, Mr. Vasvada learned counsel for Textile Labour Association and Textile Labour Union and Textile Labour Union Bhavnagar and Mr. S.N.Shelat, learned Addl.Advocate General for the State of Gujarat. This Company Petition No. 205/96 has been registered on account of the filing of report by the B.I.F.R. pertaining to Gujarat State Textile Corporation. The report states that though the Board had made many attempts it has failed in the same to see that the Gujarat State Textile Corporation survives. It has been further mentioned that it is not possible to meet the losses suffered by the Gujarat State Textile Corporation within a reasonable time and there is no likelihood of the said company being revived in future and therefore, said company should be wound up under section 20 of the Sick Industries Companies Act 1985. The Industrial Development Bank of India, Gujarat Industrial Investment Corporation, State Bank of India, State Bank of Saurashtra, Indian Overseas Bank, Corporation Bank and Union Bank had appeared before the Board and they had not raised any objection for winding up of the said company Even the secured creditors who have appeared before me have not opposed the report of the BIFR to pass an order of winding up of the said company.

2. The only contention raised by Mr. Sinha learned advocate representing the Gujarat Mill Mazdoor Union and GSTC Employees Union is that the this court should not pass an order of winding up. According to him, the company is having many lands and there is possibility for

revival of the said company by sale of the portion of the land. He also submitted before me that the liability of the said company to pay the dues of the labourers has come to an end in view of accepting the Voluntary Retirement Scheme (VRS) by the workers but he has not come before the court with any separate scheme so that the company in question can be revived. When the expert Board, after interviewing the creditors of the said company as well as the present objector and other Labour Unions has come to the conclusion that there is no possibility of reviving the said company and therefore, it would not be just and proper for this court without any positive scheme before the court to hold that the report of the BIFR should be rejected and no order for winding up of the company should be passed. It has been stated that the dues of the company are mounting day by day and it is not possible for the company to run its business and to pay off its outstanding dues. Therefore, in the circumstances, when the company itself has submitted before the BIFR that it is not in a position to run its business and that there is no positive scheme before the court, it would be unjust and improper for the court to direct the company to go on with the business by refusing the report of BIFR. If the provisions of section 20 of the Sick Industrial Companies Act 1988 are considered then it would be quite clear the report of the BIFR is binding on this court unless the court is in a position to give reasons as to why the court is not in a position to accept the same. I am unable to find any reason for refusing the report of BIFR. Therefore, in the circumstances I hold that there is no other alternative but to pass an order for winding up of the said company.

3. The company in question was formed under Gujarat State Textile Corporation Act 1986 with a view to see that the mills which were going in liquidation should be revived. There are about 11 mills which are at present under the control of GSTC. Therefore, taking into consideration this aspect as well as the fact that said company is owing huge debts, it would be proper and better to direct the O.L.(Official Liquidator) to take some Agent as contemplated by section 457(2) (v) of the Companies Act. In my opinion, Gujarat Industrial Development Corporation shall assist as agent of the O.L. so as to enable the O.L. to carry out the winding up proceedings quickly and for the benefit of all the persons concerned. Even the learned counsel representing the secured creditors and the workers' union have also supported the claim of the State Government that Gujarat Industrial Development Corporation should be associated

with the O.L. while carrying out the winding up operation.

4. I therefore, order that the Gujarat State Textile Corporation Ltd., is hereby wound up and the O.L. of this court is appointed to take charge of possession of all the properties and assets of the said company and said O.L. is to associate with the Gujarat Industrial Development Corporation as his agent u/s 457(2)(v) of the Companies Act for the purpose of preservation, protection and disposal of property and said Agent is to act under the instruction of O.L. In the said winding up proceedings, O.L. has to exercise all the powers under sections 456 and 457 of the Companies Act and in case of difficulties, he has to approach this Court. The Gujarat Industrial Development Corporation while acting as an agent of O.L., is not to claim any remuneration from the O.L.

(S.D.Pandit.J)